

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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KAREN MILENA GUAUQUE CASTIBLANCO,  
and LEIDY VIVIAN GUAUQUE CASTIBLANCO,  
*individually and on behalf of others similarly  
situated,*

**ORDER**  
20-CV-2235 (MKB) (RML)

Plaintiffs,

v.

DON ALEX PERU, INC. d/b/a DON ALEX,  
BBQ CHICKEN DON ALEX INC. d/b/a  
DON ALEX, BBQ CHICKEN DON ALEX  
II INC. d/b/a DON ALEX, DIAVI  
OSORES, and GELSEN DOE,

Defendants.

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MARGO K. BRODIE, United States District Judge:

Plaintiffs Karen Milena Guauque Castiblanco (“Karen Milena”) and Leidy Vivian Guauque Castiblanco (“Leidy Vivian”) commenced the above-captioned action against Defendants Don Alex Peru, Inc., doing business as Don Alex, BBQ Chicken Don Alex Inc., doing business as Don Alex, and BBQ Chicken Don Alex II Inc., doing business as Don Alex (the “Corporate Defendants”), as well as Diavi Osores and Gelsen Doe (the “Individual Defendants”) on May 18, 2020, to recover unpaid wages and other relief under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, and the New York Labor Law §§ 190 *et seq.* (Compl. ¶ 15, Docket Entry No. 1.) Corporate Defendants failed to appear or otherwise defend this action, and the Clerk of Court entered default against them on December 8, 2020. (Clerk’s Entry of Default, Docket Entry No. 14.) Individual Defendants also failed to appear or otherwise defend this action and the Clerk of Court entered default against them on February 22, 2021. (Clerk’s Entries of Default, Docket Entry Nos. 24–25.) Plaintiffs moved for a default judgment

on February 26, 2021, (Pls.’ Mot. for Default J., Docket Entry No. 26), and that same day, the Court referred the motion to Magistrate Judge Robert M. Levy for report and recommendation, (Order dated Feb. 26, 2021).

By report and recommendation dated August 20, 2021, Judge Levy recommended that the Court grant Plaintiffs’ motion for a default judgment against Defendants, jointly and severally, and (1) award Plaintiffs \$27,950.76 in unpaid wages, liquidated damages, and statutory damages, amounting to \$9,755.00 for Karen Milena and \$18,195.76 for Leidy Vivian; (2) award Plaintiffs pre-judgment interest on their unpaid wages at a rate of nine percent per year from the midpoints of their employment to the date of judgment, amounting to \$1,852.50 for Karen Milena and \$5,122.88 for Leidy Vivian; (3) award Plaintiffs post-judgment interest at the rate set forth in 28 U.S.C. § 1961(a) from the date of entry of judgment; and (4) award Plaintiffs \$7,120 in attorneys’ fees and costs (the “R&R”). (R&R 18, 23–24, Docket Entry No. 30.)

No objections to the R&R have been filed and the time for doing so has passed.

## **I. Discussion**

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk County*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the

point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003)); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

## **II. Conclusion**

Accordingly, the Court adopts the R&R and grants Plaintiffs’ motion for a default judgment against Defendants, jointly and severally. The Court (1) awards Plaintiffs \$27,950.76 in unpaid wages, liquidated damages, and statutory damages, amounting to \$9,755.00 for Karen Milena and \$18,195.76 for Leidy Vivian; (2) awards Plaintiffs pre-judgment interest on their unpaid wages at a rate of nine percent per year from the midpoints of their employment to the date of judgment, amounting to \$1,852.50 for Karen Milena and \$5,122.88 for Leidy Vivian; (3) awards Plaintiffs post-judgment interest at the rate set forth in 28 U.S.C. § 1961(a) from the date of entry of judgment; and (4) awards Plaintiffs \$7,120 in attorneys’ fees and costs.

Plaintiffs are directed to serve copies of this Order upon Defendants at their last known addresses and to file proof of service with the Court. The Clerk of Court is respectfully directed to close this case.

Dated: September 16, 2021  
Brooklyn, New York

SO ORDERED:

s/ MKB  
MARGO K. BRODIE  
United States District Judge